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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/018,189      | 03/18/2002  | Charles Lavigne      | 28.018              | 4897             |

7590 06/28/2004

PATTERSON, THUENTE, SKAAR AND CHRISTENSEN, P.A.  
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MINNEAPOLIS, MN 55402-2100

EXAMINER

DAVIS, RUTH A

|          |              |
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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1651

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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10/018,189

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LAVIGNE, CHARLES

3335.01US01

EXAMINER

RUTH DAVIS

ART UNIT

PAPER

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06182004

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**Commissioner for Patents**

The timely submission under 37 CFR 1.129(a) filed on April 8, 2004 is not fully responsive to the prior Office action because the amended claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Specifically, the claims are now drawn to a method for enhancing normal insulin function, where as the claims were originally drawn to a method for treating insulin resistance. The methods are distinct, each from the other, because the search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 13, 16, 19 – 21, 26, 29, 30, 41, 45, 48, 50, 65, 70 and 72 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period supersedes the time period set in the prior Office action. The inventions of the remaining groups are directed to different inventions which are not connected in design, operation, and/or effect. These methods are independent since they are not disclosed as capable of use together, they have different modes of operation, they have different functions, and/or they have different effects. One would not have to practice the various methods at the same time to practice just one method alone.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth Davis, whose telephone number is 571-272-0915.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn, can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

  
LEON B. LANKFORD, JR.  
PRIMARY EXAMINER